

MANAGEMENT MEMO

NUMBER:

MM 02-19, REVISION 2

DATE ISSUED:

DECEMBER 13, 2002

EXPIRES:

UNTIL RESCINDED

ISSUING AGENCY:

**DEPARTMENT OF
GENERAL SERVICES**

SUBJECT:

**GUIDELINES FOR THE USE OF CALIFORNIA MULTIPLE
AWARD SCHEDULES (CMAS), MASTER AGREEMENTS, AND
NON-COMPETITIVELY BID CONTRACTS**

REFERENCES:

**PCC 10295, PCC 12100, et seq.
SUPERSEDES MM 02-19 AND ADDENDA**

*The primary modification to this Management Memo 02-19 allowed by this Revision 2 is the establishment of a new category on Attachment D, for the purpose of Proprietary Pharmaceutical contracts. Additionally, this Revision 2 provides clarification and further details on how to implement the Guidelines contained herein. *Italicized wording indicates additions; please thoroughly review this Management Memo in its entirety to become familiar with its contents.**

It is the intent of the Department of General Services (DGS) to ensure that competitive bidding processes are employed to the maximum extent required by law. The purpose of this Management Memo is to provide guidelines for the acquisition of goods and services obtained through the use of CMAS, Master Agreements, and Non-Competitively Bid acquisition methods.

Separate standards and processes are required for contracts \$250,000 or less and those greater than \$250,000. These are delineated in Attachments A and B attached. Attachment A provides guidelines for purchases from CMAS and Master Agreements, distinguishing between information technology (IT) purchases and non-information technology (non-IT) purchases, and is further categorized by dollar threshold. Attachment B provides guidelines for Non-Competitively Bid (NCB) contracts, again distinguishing between IT and non-IT purchases and categorized by dollar threshold. Attachments C and D identify and provide further procedures for contracts exempt from competitive bidding by statute (Attachment C) or by policy (Attachment D), subject to specific conditions, including the Health Insurance Portability and Accountability Act (HIPAA) master service agreement, and the California Integrated Information Network (CIIN) contract. Attachment D also provides direction on how to amend a contract that was previously competitively bid. Any contracts issued pursuant to this Management Memo cannot exceed your purchasing authority. Contracts exceeding your purchasing authority must be issued/approved by the DGS.

1. Each department/commission/board shall maintain a Procurement Liaison as a single point of contact. The Procurement Liaison will be responsible for the distribution of DGS procurement directives to appropriate staff, and for ensuring that procurement policy, procedure and guidelines are followed. The name, telephone number and e-mail address of such person shall be transmitted to the Department of General Services (DGS) Procurement Division (custserv@dgs.ca.gov) by September 1, 2002. Any follow-up instructions regarding procurement guidelines will be disseminated through the designated Procurement Liaison and through the DGS Procurement Division website. (See #13 below)
2. Failure to comply with the procedures and guidelines provided in this Management Memo will result in the loss of purchasing authority or contract review exemptions.
3. Contracts should not be executed, and/or work should not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.

4. Contracts for *services procured through* a statutorily required competitive selection process as set forth in Government Code Section 4525 et seq, are exempt from this Management Memo.
5. Effective immediately, the approval limit for Non-IT service contracts is increased from \$35,000.00 to \$50,000.00.
6. Master agreements using a Pre-qualified list of suppliers: Competition must be achieved when awarding contracts to a pre-qualified list of suppliers. To ensure that competition is achieved to the fullest extent possible, pre-qualified bidders on the master agreement must have an opportunity to compete. The ceiling on information technology master agreements is \$500,000. However, departments may request an exemption to this ceiling. The ordering department must have prior approval of DGS for an exemption to the \$500,000 limit. The exemption request must address how the department intends to ensure effective competition to the fullest extent possible.
7. Master agreements based on competition: Information on how to purchase from master agreements based on competition, such as the CAL-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc., will be published on the Procurement Division website. (See #13 below) *All applicable ordering instructions and/or requirements included in Attachments A-D of this Management Memo are also reflected in the User Guide for each of these master agreements.*
8. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Management Memo, they are encouraged to take all necessary actions to comply with the intent of the Management Memo. Contracts by local government entities are exempt from the Management Memo, but remain subject to their own laws or procedures.
9.
 - a. Application of these guidelines to amendments of existing non-competitively bid contracts will be based on the cumulative dollar value after including the amendment (e.g., a \$200,000 base contract plus a \$60,000 amendment would be considered a \$260,000 contract).
 - b. These guidelines shall apply to a previously *competitively bid contract* when the awarded contract is to be amended to increase the monetary value of the contract and such increase was not considered during the original evaluation process. Application of the guidelines to such amendments shall be based on the cumulative value after including the amendment (e.g., a \$200,000 competitively bid/awarded contract plus a \$60,000 amendment shall be considered a \$260,000 contract, and shall be subject to the guidelines accordingly).
10. Purchases and contracts not addressed by this Management Memo will be subject to the DGS' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegation requirements and/or the State Contracting Manual.

11. Order of precedence: In applying these Management Memo guidelines, the precedence shall be applied in the following order:
 - a. Management Memo 02-19
 - b. Procurement Division Delegation for information technology and commodities.
 - c. State Contracting Manual (Non-IT services).

Copies of these documents are available on the Procurement Division website.
(See #13 below)

12. The guidelines provided in this Management Memo are subject to future revision as determined by DGS with the approval of the Department of Finance.
13. Additional information regarding this Management Memo will be published on the Procurement Division website (www.dgs.ca.gov/pd) as it becomes available. Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the procurement guidelines addressed herein.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Commodities:

Marnell Voss, Manager
Business Development Unit
Department of General Services
Procurement Division
Telephone: (916) 375-4563
e-mail: marnell.voss@dgs.ca.gov

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel
Department of General Services
Office of Legal Services
Telephone: (916) 376-5115
e-mail: kathleen.yates@dgs.ca.gov

Questions related to status of Non-Competitive Bid (NCB) documents may be directed to:

Sallianne Salinas
Technology Acquisitions
Department of General Services
Procurement Division
Telephone: (916) 375-4486
e-mail: sallianne.salinas@dgs.ca.gov



Clothilde V. Hewlett, Interim Director
Department of General Services

Attachments

Dollar Thresholds -- What To Do -- Attachment A

CMAS and Master Agreements

	IT Goods and Services*	Non-IT Services*	Non-IT Goods
Over \$ 500,000 Master Agreements ONLY	1. All qualified suppliers must be contacted. 2. Obtain approval of DGS to exceed the \$ 500,000 ordering limit; request must include how effective competition to the fullest extent possible will be assured. Additional measures may be required by DGS. 3. All orders must be reported to DGS within 5 working days using the Notice of Contract Award form.		
\$ 500,000	IT purchases acceptable up to \$500,000. No exemptions from CMAS limit.		
\$ 250,000		Non-IT Services acceptable up to \$250,000. No exemptions.	
\$ 100,000			Non-IT Goods acceptable up to \$100,000. No exemptions from CMAS limit.
Over \$250,000	1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available). If less than 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see Attachment B. 2. All orders must be reported to DGS within 5 working days using the Notice of Contract Award form. 3. Variance of model contract terms allowed only with DGS approval.		
	Approval by Department Director or immediate next ranking official.	1. Not applicable for CMAS or masters.	1. Not applicable for CMAS. 2. Approvals do not apply to competitively bid master commodities contracts.
Under \$ 250,000	1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available). If less than 3 offers are received, documentation of solicitation methods must be included in file. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see Attachment B. 2. Variance of model contract terms allowed only with DGS approval.	1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available). If less than 3 offers are received, documentation of solicitation methods must be included in file. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see Attachment B. 2. Variance of model contract terms allowed only with DGS approval.	1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available). If less than 3 offers are received, documentation of solicitation methods must be included in file. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see Attachment B. 2. Variance of model contract terms allowed only with DGS approval.
Over \$ 50,000		1. CMAS Orders, DGS/OD review and approval required. 2. Master Agreements, DGS/OLS review and approval for contract orders.	
Under \$5,000	Only one offer is required IF you can establish (and document) pricing is fair and reasonable.	Only one offer is required IF you can establish (and document) pricing is fair and reasonable.	Only one offer is required IF you can establish (and document) pricing is fair and reasonable.

*Evaluation/award may be awarded on the basis of best value, as applicable, and not restricted to lowest cost.

Dollar Thresholds -- What To Do -- Attachment B

Non-Competitively Bid (NCB) Contracts *

	IT Goods and Services	Non-IT Services	Non-IT Goods
Over \$250,000.00	<p>1) Emergency 2) Only source (PCC 12102)</p> <p>Requires approval by Agency Secretary or immediate next ranking official and Department Director or immediate next ranking official; OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. <i>If contract exceeds delegated purchasing authority, contract must be approved/issued by DGS.</i></p> <p>All Non-Competitively Bid Contract requests should be submitted to DGS-PD. If services, attach a Std. 821. DGS-PD will transmit those over \$250,000 to DOF for review and approval.</p>	<p>Must comply with PCC 10340.</p> <p>Requires approval by Agency Secretary or immediate next ranking official and Department Director or immediate next ranking official; OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.</p> <p>All Non-Competitively Bid Contract requests should be submitted to DGS-PD. Attach a Std. 821. DGS-PD will transmit those over \$250,000 to DOF for review and approval.</p>	<p>1) Emergency 2) Only source (PCC 10301, 10302)</p> <p>Requires approval by Agency Secretary or immediate next ranking official and Department Director or immediate next ranking official; OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.</p> <p>All Non-Competitively Bid Contract requests should be submitted to DGS-PD. DGS-PD will transmit those over \$250,000 to DOF for review and approval.</p>
\$25,000.01 to \$250,000.00	<p>1) Emergency 2) Only source (PCC 12102)</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. Approval by DGS required. <i>If contract exceeds delegated purchasing authority, contract must be approved/issued by DGS.</i></p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. NCB required with delegated purchasing authority, but only needs to be maintained in department files.</p>	<p>Must comply with PCC 10340.</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. Approval by DGS required.</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. Approval by DGS required.</p>	<p>1) Emergency 2) Only source (PCC 10301, 10302)</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. Approval by DGS required. <i>If contract exceeds delegated purchasing authority, contract must be approved/issued by DGS.</i></p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official. NCB required with delegated purchasing authority, but only needs to be maintained in department files.</p>
\$5,000.01** to \$25,000.00	No NCB required with delegated purchasing authority.	DGS approval not required.	No NCB required with delegated purchasing authority. All departments have purchasing authority up to \$100.00.
\$5,000.00** and under			

***Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.**

Note: Transactions with start dates prior to obtaining Dept of Finance approval must be approved by DGS-PD. *Submit the contract documents with the Notice of Contract Award report; after approval, DGS-PD will distribute.*

**** Approval by DGS required for departments without delegated purchasing authority.**

Note: Notice of Contract Award reports must be submitted for all DGS-approved NCBs for IT goods and services and non-IT goods. NCBs for non-IT services do not require submission of an NCA.

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Contracts Exempt by Statute

(December 13, 2002)

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt by statute (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80). *However, contracting/delegated authority is not exempt. Therefore, contracts exceeding your authority must still be submitted for approval by DGS; acquisitions exceeding your delegated authority must still be awarded by DGS.*

1. Emergency contracts which are necessary for the immediate preservation of life or state property. Contracts issued as a result of an emergency may be entered into immediately without completion of the required paperwork for the processes required herein. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements of the Management Memo. *For the purpose of this paragraph, reporting consists of submission of an approved copy of the Notice of Contract Award (NCA).*
2. Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency. *Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by MM 02-19 or the attachments thereto.*
3. Goods and services for which the state has entered into a master agreement. *Note: This is limited to those master contracts which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered. See the DGS Procurement web page at www.dgs.ca.gov/pd for a list of approved exempt contracts.*

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4. **Subvention contracts (non-discretionary grants) with a private or nonprofit entity *or local agency* for the purpose of providing services to the public or segments thereof. This exception applies only when services are being provided to the public and not specifically to a state agency. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by MM 02-19 or the attachments thereto.**
5. **Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services. Note: This exception applies only in circumstances where services to be provided are less than \$250,000.00; for services in excess of this amount, the guidelines regarding non-competitive bid contracts for \$250,000.00 or more apply.**
6. **Proprietary software maintenance and/or upgrade contracts. Note: This applies only to the maintenance and/or upgrades of existing proprietary software up to \$250,000.00 and only in circumstances where a competitive bid is not feasible. For software maintenance and/or upgrades of \$250,000.00 or more, approval of the Department Director (only), DGS and the Department of Finance is required.**

For acquisitions of new proprietary software over \$5,000 where a competitive bid is not feasible, or where maintenance and/or upgrades of existing proprietary software will exceed \$250,000.00 the guidelines for non-competitive bid contracts apply.

If the department does not hold an information technology delegation from DGS/PD, then the guidelines for non-competitive bid contracts apply for all acquisitions, *whether maintenance of existing software or new software*.

7. **Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered. Note: Shall not exceed \$5,000.**

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8. **Contracts solely for the purpose of obtaining expert witnesses for litigation. *Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by MM 02-19 or the attachments thereto.***
9. **Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff. *Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by MM 02-19 or the attachments thereto.***
10. **Contracts for which services are specifically exempt by statute from the competitive bidding process. *Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by MM 02-19 or the attachments thereto.***

Attachment D
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Contracts Exempt by Policy

(December 13, 2002)

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt based on a determination by DGS that competitive bidding is not feasible (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80). *However, contracting/delegated authority is not exempt. Therefore, contracts exceeding your authority must still be submitted for approval by DGS; acquisitions exceeding your delegated authority must still be awarded by DGS.*

1. Refuse and/or sewage disposal contracts where there is no competition because they are the authorized franchise dealers providing services to a specific geographical area.
2. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), and 911 emergency ambulance service calls;
3. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.
4. Public entertainment contracts for state-sponsored fairs and expositions.
5. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130(a).
6. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months.
7. Amendments to existing contracts which were originally competitively bid subject to the following restrictions:

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- a) Competitively bid contracts for both information technology and non-information technology, which were evaluated and awarded with options to extend for time or time and money may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the bid process.
 - b) Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:
 - Exemption shall only apply to the first amendment.
 - Amendment shall add time only, not to exceed one year, and/or add not more than 30% of the original contract value, not to exceed \$250,000.
 - The original contract must have permitted the amendment.
8. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$250,000; for facilities exceeding this amount, the guidelines regarding non-competitive bid contracts for \$250,000 or more apply.
9. Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:
- Agencies must prepare their Statement of Work (SOW).
 - Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.
 - For contracts less than \$500,000, agencies must obtain a minimum of three (3) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.
 - For contracts greater than \$500,000, agencies must obtain a minimum of six (6) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.
 - Contracts/amendments providing for a contract value greater than \$50,000 for non-IT services are subject to review and approval by DGS.
 - Contracts/amendments providing for a contract value between \$500,000 and \$5 million for non-IT services are reviewed by OHI and approved by DGS.

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- **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for IT services are reviewed by OHI and approved by DGS.**
 - **Contracts/amendments providing for a contract value greater than \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.**
- 10. Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.**
- 11. Categories of contracts for the purchase of goods or services necessary to achieve program objectives in a timely manner, where the Department of General Services has determined in advance, in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required. Any individual order placed against a specified contract pursuant to this exemption that exceeds \$250,000 shall also require the approval of the Department of General Services and the Department of Finance.**
- 12. *Proprietary pharmaceuticals and proprietary vaccines for which there are no generic equivalents and for which the Department of General Services will enter into contracts/price agreements with either the manufacturer or distributor. This commodity will be for the proprietary pharmaceuticals, proprietary vaccines purchased for public health programs by the Department of Health Services, Proprietary Vaccines used by state, local and public agency governmental entities, federal contracts as described in the 1990 Sharing Act, Botulism Immune Globulin Program, and pharmaceuticals outlined in Senate Bill 1315. There will be no dollar limit on these acquisitions; master agreements will be established only by the Department of General Services for purchasing by state and local entities.***

Miscellaneous:

In determining whether the acquisitions of a particular state agency is exempt from this Management Memo, the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.